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December 10, 2010

Ex Parte Presentation

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: GN Docket 09-191, *Preserving the Open Internet*; GN Docket No. 10-127, *Framework for Broadband Internet Service;* WC Docket No. 07-52, *Broadband Industry Practices*

Dear Ms. Dortch:

On December 8, 2010, Bill Haas, Corporate Vice President, Public Policy and Regulatory for PAETEC Communications, Inc. and the undersigned met with Margaret McCarthy of Commissioner Copps' staff to discuss the pending draft of net neutrality regulations, as described in Chairman Genachowski's recent speech.

PAETEC reiterated its strong support for the proposed net neutrality rules, whether based on a Title I or a Title II theory. We also emphasized that the proposed transparency and disclosure requirements are key. PAETEC stated that any Commission order should address separately the scope and the jurisdictional bases for the required disclosure (a) to interconnected carriers and (b) to consumers. PAETEC pointed out that under the definitions in the publicly proposed rules, interconnected carriers are both "service providers" and "users" of the incumbent broadband Internet access providers' networks to which they are interconnected, and are intended beneficiaries of the proposed rules. We also pointed out that requiring disclosure of such information will allow competitors to challenge unreasonable NMPs and minimize the need for FCC involvement in disputes over NMPs. We discussed the separate jurisdictional basis under Titles I and II (particularly Sections 251 and 256) of the Communications Act for imposing a requirement of disclosure to competing/interconnecting carriers. This separate basis would serve as a jurisdictional backup should consumer-focused Title I rules that might be based on different provisions of Title II not survive judicial review, as discussed in PAETEC's April 26 reply comments in 09-191 and 07-52 (pp. 22-32).

PAETEC also reiterated the following points that had previously been made in its filings in one or more of these proceedings:

- The rules should not apply to or limit managed services, nor should they limit prioritization that is paid for by either the enduser/retail subscriber or by other carriers, as the latter might have unintended anti-competitive consequences.
- The rules should be technologically neutral, so that all rules proposed for wireline should also apply to wireless services. We pointed out that from the central office or switching center back to the core, the wireline and wireless networks of the large wireless providers (AT&T and Verizon) overlap and travel largely on the same facilities. Thus, any rules that exempted the "wireless" network would provide a virtually undetectable opportunity for gamesmanship and arbitrage by the large players. We stated that the only important difference between mobile wireless and other broadband networks lies in the potential for congestion due to temporary fluctuations in customer numbers and usage in small geographic segments (cell tower coverage areas) of the radio access (RAN) portion of the network. The application of the wireline net neutrality rules to that access segment of mobile wireless networks can be tempered by a more fluid application of the concept of reasonable network management, and does not warrant a less stringent set of wireless net neutrality rules.
- Finally, we discussed the need to ensure that any industry advisory groups that are incorporated into the process for determining "reasonable network management" or "reasonable discrimination" represent all industry and public interest stakeholders and are not dominated by large carriers.

If you have any questions, please feel free to contact me at the above number.

Sincerely,

Mark C. Del Bianco

Cc: Margaret McCarthy